

AMENDED IN SENATE APRIL 15, 2002

SENATE BILL

No. 2093

Introduced by Senator Speier

March 12, 2002

An act to amend Sections 12376 and 12377 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 2093, as amended, Speier. ~~Conservation and Liquidation Office~~ Underwritten title companies: insolvency.

Existing law provides for the regulation of title insurers and underwritten title companies by the Insurance Commissioner. Existing law provides that if an underwritten title company is placed into bankruptcy, receivership, or conservatorship by the commissioner and there is a shortage in a subescrow or escrow account, each title insurer operating under an underwriting agreement with the underwritten title company during the previous 6 months shall be liable for a proportionate share of the shortage.

This bill would also require an affected title insurer to be liable for a proportionate share of certain costs and expenses of the commissioner in administering the insolvency and in advancing funds from the Insurance Fund to temporarily cover a subescrow or escrow account shortage, which advances the bill would authorize. The bill would provide that a title insurer has a preferred claim for reimbursement of these payments from assets of the insolvent entity. The bill would enact other related provisions.

~~Existing law provides for the appointment by the Insurance Commissioner of a chief executive officer for the Conservation and Liquidation Office of the Department of Insurance.~~

~~This bill would declare the Legislature's intent to structure that office to minimize conflicts of interest and to maximize its ability to serve policyholders.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to structure the~~
2 *SECTION 1. Section 12376 of the Insurance Code is amended*
3 *to read:*
4 12376. (a) If an underwritten title company is placed into
5 bankruptcy, receivership, or conservatorship by the commissioner
6 ~~and there is a shortage in a subescrow or an escrow account, as~~
7 ~~defined in subdivision (f) of Section 12413.1, each title insurer~~
8 ~~operating under an underwriting agreement with the underwritten~~
9 ~~title company at the time of during the six months prior to~~
10 conservatorship, bankruptcy, or receivership shall be liable for any
11 shortage that may exist in an escrow or subescrow account.
12 *Further, that title insurer shall be liable for all of the following: (1)*
13 *the commissioner's costs and expenses of seizing and taking*
14 *control of the underwritten title company's offices, operations, and*
15 *assets, (2) the commissioner's costs and expenses of handling,*
16 *adjusting, and closing all subescrow and escrow accounts,*
17 *including the costs and expenses of determining whether shortages*
18 *exist in any subescrow and escrow accounts, and (3) other costs*
19 *and expenses incurred by the commissioner in connection with*
20 *borrowing from the Insurance Fund pursuant to subdivision (g)*
21 *and foregone earnings or interest of the Insurance Fund resulting*
22 *from the borrowing. As used in this subdivision, "commissioner's*
23 *costs and expenses" includes the costs and expenses of all agents*
24 *and contractors retained by the commissioner in performing*
25 *functions set forth in this subdivision, and "subescrow" and*
26 *"escrow" means nontitle subescrows and escrows.*
27 (b) If, during the six months prior to establishment of a
28 conservatorship, bankruptcy, or receivership under subdivision
29 (a), the underwritten title company was authorized by
30 underwriting agreements to issue title policies for more than one
31 title insurer, the liability of each title insurer is determined by
32 multiplying the amount of the total shortage, *costs, and expenses,*

as set forth in subdivision (a), by the percentage of the underwritten title company's business attributable to each title insurer during the 12-month period preceding the establishment of the conservatorship, bankruptcy, or receivership, *with each title insurer's liability pursuant to this subdivision to be referred to as its proportionate share*. These calculations shall result in 100 percent of the shortage, *costs, and expenses* being proportionately allotted to each title insurer authorized to issue title policies in the last six months preceding the underwritten title company being placed into bankruptcy, receivership, or conservatorship.

~~(c) Once the department, conservator, liquidator, receiver, or bankruptcy trustee determines the shortage in the escrow and subescrow accounts pursuant to this section, the title insurer having liability under this section shall deposit its proportionate share directly into an account established solely for the reimbursement to escrow accountholders within 90 days of written notification by the department, conservator, liquidator, receiver, or bankruptcy trustee. Pursuant to subdivision (a) of Section 12377, this contribution shall not be considered as part of the estate. The commissioner may periodically, but not more often than every 30 days, estimate or determine the total shortage in the escrow and subescrow accounts pursuant to this section, and estimate or determine the commissioner's costs and expenses as provided in subdivision (a). After the periodic estimates or determinations are made, each title insurer having liability under this section shall, within 30 days after written notification, deposit its proportionate share, as described in subdivision (b), of the shortage, costs, and expenses into an escrow account established by the commissioner for the purpose of reimbursement to subescrow or escrow accountholders, reimbursement to the commissioner in the event that the commissioner advances or has advanced payments to subescrow or escrow accountholders, or payment or reimbursement of the commissioner's costs and expenses pursuant to subdivision (a). The commissioner shall return to each title insurer its proportionate share of any funds remaining in the escrow account after all liabilities in subdivision (a) have been satisfied. If a title insurer fails to make a payment required by this subdivision within the 30-day period, the title insurer shall pay a penalty calculated at the rate of 10 percent per~~

1 *annum on the unpaid amount until the payment is received by the*
2 *commissioner.*

3 (d) Nothing in this section relieves a person of liability under
4 any other provision of law that he or she may have for a shortage
5 as set forth in subdivision (a). A title insurer, on becoming liable
6 for a shortage as set forth in this section, is entitled to enforce every
7 available remedy, or bring any cause of action that would have
8 been available to a person compensated by the title insurer.

9 (e) A title insurer ~~who compensates an escrow accountholder~~
10 ~~for shortages pursuant to this section shall be entitled to make~~
11 ~~claims for reimbursement, proportionate to its contribution~~
12 ~~pursuant to subdivision (b), from the estate in conservatorship,~~
13 ~~liquidation, bankruptcy, or receivership as a preferred claimant~~
14 ~~under paragraph (4) of subdivision (a) of Section 1033 shall be~~
15 *entitled to make a claim for reimbursement for subescrow or*
16 *escrow shortages paid to subescrow or escrow accountholders and*
17 *for payments of its proportionate share pursuant to subdivision (c).*
18 *Those claims shall be considered as preferred claims pursuant to*
19 *paragraph (2) of subdivision (a) of Section 1033.*

20 (f) A title insurer shall be entitled to make a claim for
21 reimbursement for payment of its proportionate share of the
22 commissioner's costs and expenses paid pursuant to subdivision
23 (c). Those claims shall be considered as preferred claims pursuant
24 to paragraph (2) of subdivision (a) of Section 1033.

25 (g) The commissioner is authorized to borrow from the
26 Insurance Fund to cover shortages in subescrow or escrow
27 accounts and to pay costs and expenses set forth in subdivision (a).
28

29 *SEC. 2. Section 12377 of the Insurance Code is amended to*
30 *read:*

31 12377. (a) All escrow funds received by an underwritten title
32 company that are subject to Section 12413.5 shall not be
33 considered part of the estate of the underwritten title company for
34 purposes of liquidation, receivership, bankruptcy, or conservation
35 pursuant to Article 14 (commencing with Section 1010) of
36 Chapter 1 of Part 2 of Division 1.

37 (b) Where an underwritten title company is placed into
38 conservatorship, receivership, or bankruptcy and the escrow
39 accounts held by the company are found to have shortages, the
40 department, conservator, liquidator, receiver, or bankruptcy

trustee shall do everything reasonably possible to trace these moneys to other depository accounts or assets.

(c) Any real or personal property traceable to shortages in the escrow accounts shall not be considered part of the estate available to other claimants under Section 1033. Those assets shall be liquidated and *paid in the following order: (1) if the commissioner has paid or advanced funds to subescrow or escrow accountholders from sources other than the escrow established pursuant to subdivision (c) of Section 12376, they shall be paid to the commissioner to the extent that the commissioner has not been repaid by title insurers having liability under Section 12376, (2) they shall be deposited into an escrow established pursuant to subdivision (c) of Section 12376, and (3) they shall be directly reimbursed to the title insurer or insurers that have reimbursed escrow depositors under Section 12376 prior to any liquidation of the estate pursuant to Section 1033.* In no event shall a title insurer be reimbursed an amount in excess of its liability as determined in Section 12376.

~~Conservation and Liquidation Office of the Department of Insurance so as to minimize conflicts of interest and to maximize the ability of the office to service policyholders.~~

